

***United States Court of Appeals  
for the Second Circuit***



**PETITION FOR  
REHEARING**



74-2348

UNITED STATES COURT OF APPEALS  
FOR THE SECOND CIRCUIT

Cal. No. 496 -- September Term 1974

Argued April 7, 1975

Decided May 29, 1975

Docket No. 74-2348

RICHARD PERRY,

Plaintiff-Appellant,

-against-

ROLAND H. ST. PIERRE, Mayor of the City of  
Plattsburgh, New York; ROBERT BURKE, Alderman,  
Ward I, City of Plattsburgh, New York; GARY DAME,  
Alderman, Ward I, City of Plattsburgh, New York;  
CARL RENNELL, Alderman, Ward II, City of  
Plattsburgh, New York; MICHAEL HALEY, Alderman,  
Ward II, City of Plattsburgh, New York; ROBERT  
GRIFFIN, Alderman, Ward III, City of Plattsburgh,  
New York; GEORGE PO, Alderman, Ward III, City  
of Plattsburgh, New York; aforesaid Aldermen being  
all of the members of the Common Court of the City  
of Plattsburgh, New York,

Defendants-Appellees.



PETITION FOR  
REHEARING

TO THE HONORABLE JUDGES OF THE UNITED STATES COURT OF APPEALS FOR THE  
SECOND CIRCUIT:

Richard Perry, the plaintiff-appellant above named, presents  
this, his petition for a rehearing in banc of its decision of May 29,  
1975 in the above entitled case.

In October, 1974, three judges of this court, Danaher, Feinberg and Mulligan, after hearing an oral argument and reviewing the record, did decide to grant a stay of all proceedings until the matter was finally argued so they must have felt that there was merit to the plaintiff-appellant's position.

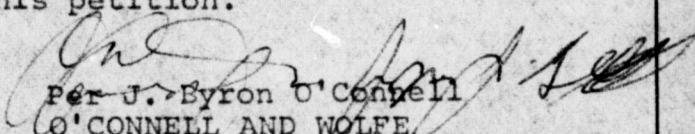
Three different judges, namely, Hays, Gurfein, and Van Graafeiland, affirmed the judgment of the district court. It is respectfully submitted that there is a very serious constitutional question involved in this case, that is whether a man who is admittedly disabled and the pleadings admit he was disabled, may be restricted in his free speech and free press in running for office.

This is not the same as the case of Broadrick vs. Oklahoma or the case of Letters Carriers. In those cases, the Supreme Court of the United States held that there should be a real and substantial overbreadth in order to constitute a violation of free speech and free press. The state had the power to restrict police officers or other civil servants. This is not the case here. We have a man, who, by the pleadings, is disabled and we have an overinclusion in relation to his rights under the equal protection clause and an overinclusion in relation to his due process rights. For these reasons it is respectfully requested that the entire court rehear this appeal and decide in the interest of justice the serious constitutional question that has been raised, that is to say, whether a disabled person who happens to be nominally a police officer, but not functioning as such may be restricted

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in his constitutional rights to run for public office, to campaign for public office and to speak out upon the issues and since three judges seem to have felt when they granted the stay that my client's cause was just and since three different judges affirmed the judgment of the district court, I respectfully submit that the entire court should rehear the merits of this appeal in banc and should invite the national police associations and unions to file briefs amicus and respectfully request the granting of this petition.

  
Per J. Byron O'Connell  
O'CONNELL AND WOLFE  
Attorneys for Petitioner  
66 Margaret Street  
Plattsburgh, New York 12901  
(518) 561-1440

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STATE OF NEW YORK, COUNTY OF

CERTIFICATION BY ATTORNEY

The undersigned, an attorney admitted to practice in the courts of New York State, certifies that the within found to be a true and complete copy.

Dated: \_\_\_\_\_

STATE OF NEW YORK, COUNTY OF

ATTORNEY'S AFFIRMATION

The undersigned, an attorney admitted to practice in the courts of New York State, shows; that deponent is the attorney(s) of record for in the within action; that deponent has read the foregoing and knows the contents thereof; that the same is true to deponent's own knowledge, except as to the matters therein stated to be alleged on information and belief, and that as to those matters deponent believes it to be true. Deponent further says that the reason this verification is made by deponent and not by

The grounds of deponent's belief as to all matters not stated upon deponent's knowledge are as follows:

The undersigned affirms that the foregoing statements are true, under the penalties of perjury.

Dated: \_\_\_\_\_

STATE OF NEW YORK, COUNTY OF

SS.: \_\_\_\_\_

INDIVIDUAL VERIFICATION

deponent is the read the foregoing being duly sworn, deposes and says that in the within action; that deponent has and knows the contents thereof; that the same is true to deponent's own knowledge, except as to the matters therein stated to be alleged on information and belief, and that as to those matters deponent believes it to be true.

Sworn to before me, this day of 19 \_\_\_\_\_

STATE OF NEW YORK, COUNTY OF

SS.: \_\_\_\_\_

CORPORATE VERIFICATION

of being duly sworn, deposes and says that deponent is the corporation named in the within action; that deponent has read the foregoing and knows the contents thereof; and that the same is true to deponent's own knowledge, except as to the matters therein stated to be alleged on information and belief, and as to those matters deponent believes it to be true.

This verification is made by deponent because

is a corporation. Deponent is an officer thereof, to-wit, its

The grounds of deponent's belief as to all matters not stated upon deponent's knowledge are as follows:

Sworn to before me, this day of 19 \_\_\_\_\_

STATE OF NEW YORK, COUNTY OF

SS.: \_\_\_\_\_

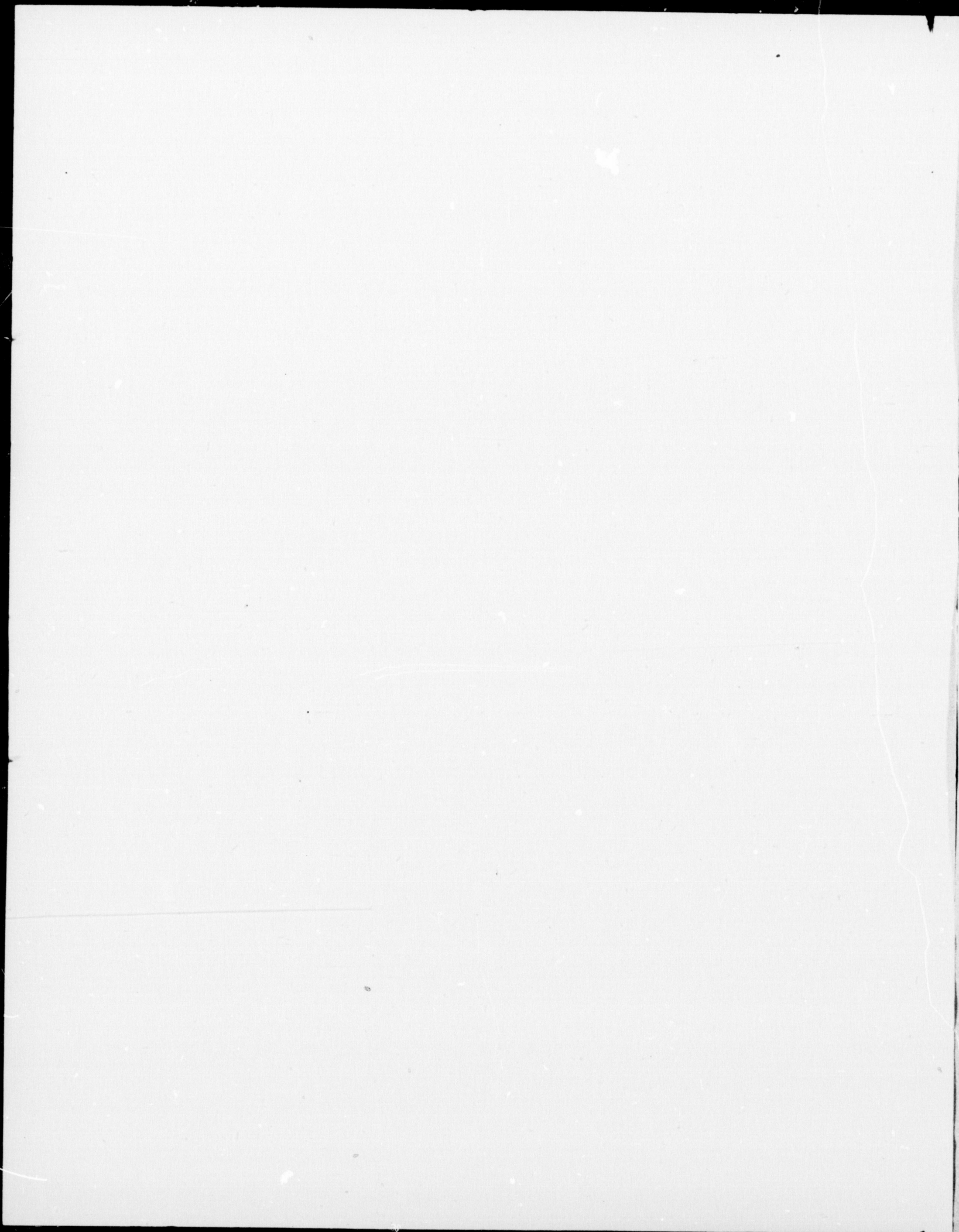
AFFIDAVIT OF SERVICE BY MAIL

being duly sworn, deposes and says, that deponent is not a party to the action, is over 18 years of age and resides at

That on the day of 19 deponent served the within attorney(s) for upon in this action, at

the address designated by said attorney(s) for that purpose by depositing a true copy of same enclosed in a postpaid properly addressed wrapper, in — a post office — official depository under the exclusive care and custody of the United States post office department within the State of New York.

Sworn to before me, this day of 19 \_\_\_\_\_



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STATE OF NEW YORK

UNITED STATES

COURT OF APPEALS

COUNTY OF

RICHARD PERRY,

Plaintiff-Appellant,

-against-

ROLAND H. ST. PIERRE, Mayor of the City of Plattsburgh, New York,  
et. al.,

Defendants-Appellees.

PETITION FOR REHEARING

To

Attorney(s) for

Service of a copy of the within

is hereby admitted.

Dated,

Attorney(s) for

Sir:—Please take notice

NOTICE OF ENTRY

that the within is a (certified) true copy of a  
duly entered in the office of a clerk of the within named court on

19

NOTICE OF SETTLEMENT

that an order of which the within is a true copy will be presented for settlement to the HON.

one of the judges of the within named Court,

at

on the

day of

19

at

M

Dated,

Yours, etc.

O'Connell and Wolfe

Attorneys for

Office and Post Office Address

55 Margaret Street

Plattsburgh, New York 12901

561-1440

To

Attorney(s) for



